

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TECHGUARD SECURITY, L.L.C.,)	
)	
Plaintiff and Counterclaim)	
Defendant,)	
)	
vs.)	Case No. 4:08CV1489 AGF
)	
JAMES B. JOYCE,)	
)	
Defendant and Counterclaim)	
Plaintiff.)	

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's request, pursuant to Federal Rule of Civil Procedure 35(a), for an independent psychiatric examination of Defendant. Plaintiff also asked the Court to order Defendant to produce to the medical examiner all previous psychiatric/psychological records. In this action, Plaintiff TechGuard, Inc., alleges that Plaintiff James Joyce, inter alia, improperly filed a patent application for an invention he did not invent or own, and also engaged in improper conduct in the workplace. Plaintiff now asserts that it believes that Defendant did these things while undergoing psychiatric treatment, and that a medical report of Defendant's psychiatric condition would help jurors understand Defendant's conduct.

Rule 35(a) provides as follows:

- (1) ***In General.*** The court where the action is pending may order a party whose mental or physical condition -- including blood group -- is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. . . .

(2) ***Motion and Notice; Contents of the Order.***

The order:


(A) may be made only on motion for good cause and on notice to all parties and the person to be examined.

Here, Plaintiff has made no showing that Defendant's mental health is in controversy, and has provided no case law in support of its request. The Court concludes that Plaintiff's request is baseless. See Schlagenhauf v. Holder, 379 U.S. 104, 118-20 (1964) (holding that Rule 35(a) applied to defendants as well as plaintiffs, but only where the plaintiff makes an affirmative showing that the defendant's physical or mental condition is "really and genuinely in controversy," such as where a defendant asserts his mental condition as a defense to a claim). Here Defendant has done nothing to put his mental condition at issue in the case.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's request for an independent psychiatric examination of Defendant is **DENIED**. [Doc. #41]

IT IS FURTHER ORDERED that Plaintiff's request for time to file an amended reply regarding the above motion is **DENIED** as the Court perceives no reason why Plaintiff could not determine which law applied to its present motion, before this Court rules on other pending matters. [Doc. #49]


AUDREY G. FLEISSIG
UNITED STATES MAGISTRATE JUDGE

Dated this 26th day of June, 2009.